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NGEOW VOON YEAN

v.

SUNGEI WANG PLAZA SDN BHD/LANDMARKS HOLDING BHD

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FEDERAL COURT, PUTRAJAYA
ABDUL MALEK AHMAD PCA
SITI NORMA YAAKOB FCJ
ALAUDDIN MOHD SHERIFF FCJ

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[CIVIL APPEAL NO: 04-1-2004(W)]
4 JULY 2006

LABOUR LAW: *Employment - Dismissal - Appeal against confirmation by Court of Appeal of High Court's decision to quash*

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award of Industrial Court - Obedience to superior orders - Whether principle of an order being "manifestly wrong" has any part in doctrine of superior orders - Whether reliance by Court of Appeal on findings of fact made by High Court misplaced - Whether Industrial Court's award ought to be restored

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ADMINISTRATIVE LAW: *Exercise of judicial functions - Judicial review - Certiorari proceedings - Appeal against confirmation by Court of Appeal of High Court's decision to quash award of Industrial Court - Obedience to superior orders - Whether principle of an order being "manifestly wrong" has any part in doctrine of superior orders - Whether*

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reliance by Court of Appeal on findings of fact made by High Court misplaced - Whether Industrial Court's award ought to be restored

The appellant, the General Manager of the respondent at the time of his dismissal as a result of being found guilty of two charges of

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gross negligence and misconduct, brought proceedings in the Industrial Court contending that his dismissal was without just cause and excuse. The Industrial Court found for the appellant but both the High Court and the Court of Appeal held in favour of the respondent. The appellant was granted leave to refer the

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following two questions of law to this court: (i) whether the law on obedience to superior orders in the context of employment law in Malaysia is in any way different from that at common law; and (ii) whether the principle of an order being "manifestly wrong" has any part in the doctrine of superior orders. The gross negligence

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and misconduct that the appellant had been found guilty of related to misrepresentations in two deeds of assignment which stated that the price for three parcels of property – in respect of which

two sale and purchase agreements were executed – had been fully paid when in fact that was not so. The appellant's defence throughout the proceedings had been that he had endorsed and signed the two deeds of assignment on the instructions of his superior, the Executive Director of the respondent ('Chong'), who had assured him that everything was in order and that he, Chong, would take the responsibility of collecting the purchase price of the properties sold. In the present appeal, the following issues also required determination: (a) whether reliance by the Court of Appeal on the same finding made by the High Court *ie*, that the appellant knew of the misrepresentations appearing in the two deeds of assignment, was misplaced as the High Court had confused the facts surrounding the execution of the two sale and purchase agreements with that surrounding the execution of the deeds of assignment; and (b) whether the Court of Appeal was correct when it held that the general rule on superior orders does not apply to an employee who is conscious that an order given to him is manifestly wrong.

Held (allowing the appeal)
Per Siti Norma Yaakob FCJ:

(1) It would appear that the High Court linked the assurance given by Chong to be responsible for collecting all monies due, to have been made by him at the time of the endorsement of the two deeds. This was not correct as that assurance was given at the time the two sale and purchase agreements were signed. Since the facts alluded to by the High Court were not present at the time of the endorsements but nevertheless associated with the two deeds, the High Court reached a conclusion that resulted in the findings of the Industrial Court being set aside. The Court of Appeal, in accepting the High Court's conclusion, made the same error. Such a conclusion was erroneous as the guilty mind that required to be established must be the guilty mind present at the time of the endorsements and not at the time of the execution of the two sale and purchase agreements. At the time of the endorsements, the Industrial Court had concluded that the appellant was not aware that the purchase price of the properties had been paid in full, a finding of fact with which this court would not disagree as the evidence supported such a finding and there was nothing perverse about it to warrant a reversal. Moreover, the appellant's conduct in confronting

A Chong after he discovered that the deeds contained misrepresentations was consistent with the conduct of a man who did not know that he had committed a wrong. (paras 25 & 26)

B **(2)** From the case law, it is clear that the duty of obedience is confined to compliance with the lawful and reasonable orders of an employer and, as such, the concept of an order being manifestly wrong has no part in the doctrine of superior orders. To that extent the Court of Appeal erred when it C made an exception to the general rule on superior orders when stating that an employee was entitled to disobey the orders of his superiors if he, the employee, was aware that such orders were manifestly wrong. The duty of an employee at common law is also similar in that he is to comply with all lawful and D reasonable orders given by his employer with respect to the performance of such functions within the scope of his employment. That duty is one of the fundamental obligations which is deemed to be impliedly undertaken in every contract of hiring, and is subject to the qualification that the employer E may not order his employee to do anything illegal or dangerous. (para 33 & 34)

(3) However, it may well be that an employee is caught in a situation in which he is required to obey an order and he is F doubtful whether the order is legal or not. In those circumstances, the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not G legal, it would be impossible for management to maintain discipline and industrial peace. On the other hand, if the employee takes it upon himself to disobey an order that he thinks to be unlawful and unreasonable, two courses of action are open to him. He can point out his difficulties, if any, to H his superior and if the latter insists on the order being carried out, he can obey the order and take the matter further in proceedings against his employer or complain to his union. If he disobeys, he must take the risk if the court finds the order to be lawful and reasonable. (para 35)

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(4) For the reasons given, the two questions posed were answered in the negative. As this court accepted the findings of fact made by the Industrial Court and there was nothing perverse in its application of the relevant employment laws, this appeal was allowed with costs here as well as costs in the High Court and the Court of Appeal. The orders of the Court of Appeal were set aside and Award No. 179 was restored, and the deposit made in this appeal was to be refunded to the appellant. (para 37)

[Order accordingly.]

Bahasa Malaysia *translation of headnotes*

Perayu, yang dipecat oleh responden sebagai Pengurus Besarnya setelah didapati bersalah atas tuduhan salah laku dan kecuaian melampau, telah mencabar pemecatannya di Mahkamah Perusahaan dengan alasan bahawa ia dibuat tanpa sebab-sebab dan alasan yang wajar. Mahkamah Perusahaan membenarkan tuntutan perayu, tetapi kedua-dua Mahkamah Tinggi dan Mahkamah Rayuan telah berpihak kepada responden. Berikutnya, perayu diberi kebenaran untuk merujuk dua persoalan undang-undang ke mahkamah ini, iaitu: (i) sama ada undang-undang berkaitan mematuhi arahan pihak atasan, dalam konteks undang-undang pekerjaan di Malaysia, berbeza dari apa yang ada di sisi common law; dan (ii) sama ada prinsip arahan adalah "ketara salah" mempunyai tempat dalam doktrin arahan pihak atasan. Salah laku dan kecuaian melampau yang perayu didapati bersalah adalah berkait dengan salahnyata dalam dua suratikatan serahhak yang menyatakan bahawa harga tiga bidang hartanah – di mana dua perjanjian jual beli mengenainya telah dimeterai – telah dibayar sepenuhnya, sedangkan hakikatnya tidak begitu. Di prosiding, pembelaan perayu adalah bahawa beliau telah menandatangani dan mengesahkan kedua-dua suratikatan serahhak atas arahan pegawai atasannya, iaitu Pengarah Eksekutif responden ('Chong'), yang menyakinkan beliau bahawa semuanya dalam keadaan baik dan bahawa ia sendiri, iaitu Chong, bertanggungjawab di atas pengutipan harga jualan bagi hartanah tersebut. Di rayuan semasa, isu-isu berikut juga turut minta diputuskan, iaitu: (a) sama ada Mahkamah Rayuan silap apabila bergantung kepada dapatan Mahkamah Tinggi bahawa perayu tahu tentang salahnyata di kedua-dua suratikatan serahhak, disebabkan Mahkamah Tinggi telah terkeliru di antara fakta yang menyelubungi dua perjanjian jual beli dengan fakta yang menyelubungi pemeteraian dua

suratikatan serahhak; (b) sama ada Mahkamah Rayuan betul apabila memutuskan bahawa kaedah am doktrin arahan pihak atasan tidak terpakai kepada pekerja yang menyedari bahawa arahan yang diberi kepadanya adalah ketara salah.

Diputuskan (membenarkan rayuan)
Oleh Siti Norma Yaakob HMR:

(1) Mahkamah Tinggi kelihatannya telah mengaitkan kepastian yang diberikan oleh Chong untuk bertanggungjawab atas pengutipan kesemua wang yang harus dibayar, sebagai akan dibuat olehnya pada waktu pemeteraian kedua-dua suratikatan. Ini tidak benar kerana kepastian tersebut diberi sewaktu kedua-dua perjanjian jual beli disahkan. Oleh kerana fakta yang dirujuk oleh Mahkamah Tinggi tidak wujud sewaktu pengesahan dibuat walaupun ianya berhubungan dengan kedua-dua suratikatan, Mahkamah Tinggi telah mencapai konklusi yang menyebabkan dapatan Mahkamah Perusahaan diketepikan. Mahkamah Rayuan, dalam menerima dapatan Mahkamah Tinggi, telah melakukan kesilapan serupa. Dapatan sedemikian adalah salah kerana niat salah yang perlu dibuktikan adalah niat salah yang wujud sewaktu pengesahan dan bukannya semasa pemeteraian kedua-dua perjanjian jual beli. Mahkamah Perusahaan telah merumuskan bahawa, pada masa pengesahan dibuat, perayu tidak menyedari bahawa harga jualan hartanah telah dibayar sepenuhnya. Mahkamah ini bersetuju dengan dapatan fakta tersebut, kerana ia disokong oleh keterangan dan juga kerana tiada apa-apa kesalahan pada dapatan itu yang mewajarkan penolakannya. Selain itu, tindakan perayu bersemuka dengan Chong selepas mengetahui bahawa suratikatan mengandungi misrepresentasi adalah selaras dengan kelakuan seorang yang tidak tahu bahawa dia telah melakukan kesalahan.

(2) Berdasarkan undang-undang kes, jelas bahawa tanggungjawab untuk mematuhi adalah terhad kepada mematuhi arahan-arahan yang sah dan munasabah sahaja, dan kerana itu konsep arahan ketara salah tiada tempat dalam doktrin arahan pihak atasan. Maka, dari segi itu, Mahkamah Rayuan tersilap apabila membuat pengecualian kepada kaedah am konsep dan menyatakan bahawa seorang pekerja berhak untuk enggan menurut arahan pegawai atasannya jika menyedari bahawa ia arahan yang jelas salah. Tanggungjawab seorang pekerja di sisi common law adalah sama, iaitu ia harus mematuhi semua

perintah yang sah dan munasabah yang diberi oleh pegawai atasannya berhubung pelaksanaan tugas-tugas yang termasuk di dalam skop pekerjaannya. Tanggungjawab ini adalah satu obligasi penting yang dianggap sebagai dimasuki secara tersirat dalam setiap kontrak pekerjaan, tertakluk kepada syarat bahawa majikan tidak boleh mengarahkan pekerjanya melakukan sesuatu yang tidak sah atau merbahaya.

(3) Bagaimanapun, ada kemungkinan pekerja berada dalam keadaan di mana ia dikehendaki mematuhi arahan dan ia was-was sama ada arahan itu sah ataupun tidak. Dalam keadaan sedemikian, jalan yang betul ialah bagi pekerja itu mematuhi dahulu arahan dan mencabar kesahannya dalam prosiding berasingan. Pengasingan ini perlu kerana, jika undang-undang membenar pekerja untuk tidak mengikut arahan yang difikirnya tidak sah, maka mustahil bagi pengurusan untuk melaksanakan disiplin dan mengekalkan keamanan perusahaan. Sebaliknya, jika pekerja memandai sendiri untuk tidak mematuhi arahan yang difikirkannya tidak sah atau tidak munasabah, terdapat dua jalan yang terbuka baginya. Ia boleh membangkitkan kesukaran yang dihadapinya, jika ada, kepada pegawai atasannya, dan jika pihak atasannya terus meminta supaya arahan dilaksanakan, ia bolehlah mematuhinya dan kemudian memulakan prosiding terhadap majikannya ataupun mengadu kepada kesatuannya. Jika ia tidak mematuhi, ia harus bersedia menerima risikonya jika mahkamah berpendapat bahawa arahan adalah sah dan munasabah.

(4) Atas alasan-alasan yang diberi, kedua-dua soalan yang dikemukakan dijawab secara negatif. Oleh kerana mahkamah ini menerima dapatan fakta yang dibuat oleh Mahkamah Perusahaan dan tidak berlaku kesilapan pada pelaksanaan undang-undang pekerjaan yang relevan olehnya, rayuan dibenarkan dengan kos di sini dan kos di Mahkamah Tinggi dan Mahkamah Rayuan. Selanjutnya, perintah-perintah Mahkamah Rayuan diketepikan dan Award No. 179 dikekalkan. Deposit yang dibuat untuk rayuan ini dikembalikan kepada perayu.

[Perintah sekadarnya.]

Case(s) referred to:

C Paranthaman v. Sime Darby Berhad (Sime Darby Plantation) [1994] 4 CLJ 532 HC ***(refd)***

Laws v. London Chronicle (Indicator Newspapers) Ltd [1959] 2 All ER 285 ***(refd)***

Menon v. The Brooklands (Selangor) Rubber Co Ltd [1967] 1 LNS 100 ***(refd)***

Oasis Milk Bar v. Lim Teng & Ors [1962] 1 LNS 111 ***(refd)***

Pan Global Textiles Berhad, Pulau Pinang v. Ang Beng Teik [2002] 1 CLJ 181 FC ***(refd)***

PP v. Tengku Mahmood Iskandar [1973] 1 MLJ 128 ***(refd)***

Vasudevan Pillai & Anor v. City Council of Singapore [1965] 2 MLJ 51 ***(refd)***

Yong Yoke Sung & Ors v. Sungai Way Estate [1966] 1 MLJ 175 ***(refd)***

For the appellant - Cyrus Das (Wang Kuo Shing with him); M/s Wang Kuo Shing & Co

For the respondent - Vijayan Venugopal; M/s Shearn Delamore & Co

[Appeal from Court of Appeal; Civil Appeal No: W-04-3-1998]

Reported by Suresh Nathan

JUDGMENT

Siti Norma Yaakob FCJ:

[1] Proceedings were first commenced by the appellant in the Industrial Court, where he claimed that he had been wrongly dismissed by his employer, the respondent, without just cause or excuse.

[2] The appellant had worked for the respondent since early 1977, as a Management Trainee and on 27 October 1987, whilst he held the position as its General Manager, he was suspended from his duties pending a domestic inquiry into allegations of gross negligence and misconduct.

[3] At the domestic inquiry that was conducted on 5 January 1988, the appellant had to answer to two charges of gross negligence and the acts complained of relate to:

> (1) your endorsement in a deed of assignment dated 20th December, 1985, and executed by Sa-Mula Jadi Sdn. Bhd. in favour of Arab Malaysian Finance Bhd. in respect of SG-001. In the endorsement you stated that the whole of the

purchase price of RM2,722,500.00 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

(2) your endorsement in a deed of assignment dated 25th April, 1986, and executed by Sa-Mula Jadi Sdn. Bhd. in favour of Asia Commercial Finance (M) Bhd in relation to Basement 001 and Basement Disco. In the endorsement you stated that the whole of the purchase price of RM3,800,000.00 payable by Sa-Mula Jadi had been paid in full on that date when in fact this was not the case.

[4] The appellant admitted to the acts of negligence but contended that he was merely carrying out the lawful orders of his superior, one Simon Chong ("Chong"), the respondent's Executive Director. However his defence did not get him anywhere as he was found guilty of both charges and on 12 February 1988, the respondent dismissed him from its employment.

[5] The appellant questioned his dismissal in the Industrial Court and in Award No. 179 of 1993, dated 16 June 1993, that court ruled in his favour and held his dismissal to be without just cause or excuse. The appellant was awarded compensation *in lieu* of reinstatement, back wages and payments in respect of leave due and not taken, to be paid to him within one month of the date of the award. A stay on the award was granted pending further proceedings in the High Court.

[6] Those further proceedings were by way of Originating Motion No. R1-25-87-93 filed by the respondent to have the award quashed and the High Court allowed its motion on 29 December 1997, quashed the award by way of *certiorari* and also awarded costs to the respondent.

[7] The appellant took the matter further to the Court of Appeal, which confirmed the High Court's findings on 20 November 2003, and the appellant then filed an application for leave to appeal to this court. Leave was granted to him on 18 February 2004, to refer the following two questions of law.

(1) Whether the law on obedience to superior orders in the context of employment law in Malaysia is any way different from that at common law.

(2) Whether the principle of an order being "manifestly wrong" has any part in the doctrine of superior orders.

[8] Before directing our minds to the two questions, it is pertinent that we set out the circumstances surrounding the execution of the documents leading to the allegations and findings of gross negligence on the part of the appellant.

[9] In May 1985, the respondent successfully negotiated the sale of three parcels of business premises in Sungei Wang Plaza, a commercial complex, to a company called Sa-Mula Jadi Sdn. Bhd. ("Sa-Mula"). Two sale and purchase agreements were executed in respect of the three parcels, the first to cover the two basement units, namely Basement 001 and Basement Disco, and the second to cover the ground floor unit, Lot SG-001.

[10] In the first sale and purchase agreement dated 31 May 1985, Sa-Mula agreed to purchase the basement units for RM3.8 million, the 10% deposit of which had been acknowledged by the respondent as having been paid by Sa-Mula with Sa-Mula undertaking to pay the balance of the purchase price in two instalments, RM1.52 million within three months of the date of the agreement and RM1.9 million within six months of the date of the agreement. The appellant signed this first sale and purchase agreement on behalf of the respondent.

[11] As for Lot SG-001, the purchase price was agreed at RM2,722,500 and this is reflected in the second sale and purchase agreement dated 11 June 1985, which was also executed by the appellant on behalf of the respondent. The other terms of the second sale and purchase agreement acknowledge receipt by the respondent of the 10% deposit made by Sa-Mula and the latter's undertaking to settle the balance of the purchase price within 14 days of the date of the agreement, ie, by 25 June 1985.

[12] However six months after the execution of the second sale and purchase agreement, Sa-Mula assigned all its rights and interests under that agreement to Arab-Malaysian Finance Bhd ("AMFB") to secure loans made by AMFB to a third party. For this transaction, Sa-Mula also obtained the respondent's consent as evidenced by an endorsement made by the appellant on behalf of the respondent in a document titled "Consents And Undertakings By The Vendor". In endorsing the respondent's consent to the assignment, the appellant made a number of confirmations, one of which was that the purchase price for Lot SG-001 had been settled in full by Sa-Mula as at 20 December 1985, the date of assignment when in fact that was not the true picture.

[13] Sa-Mula also executed a second deed of assignment assigning all its rights and interests in the first sale and purchase agreement to Asia Commercial Finance (M) Bhd ("ACF") to secure a loan made by ACF to a third party. The second deed of assignment is dated 25 April 1986 and an acknowledgement and consent to the assignment which formed part of the assignment is endorsed by the appellant on behalf of the respondent confirming that as at 25 April 1986, the purchase price for the basement units had been fully settled. This confirmation as well as the 10% deposit acknowledged as having been paid by Sa-Mula in the first sale and purchase agreement had never been received by the respondent.

[14] The gross negligence and misconduct that the appellant had been found guilty of relate to the misrepresentations in the two deeds of assignment which state that the price for all the three parcels of property had been fully paid when in fact that was not so.

[15] The appellant's defence throughout all the proceedings had been that he had endorsed and signed the two deeds of assignment on the instructions of Chong, who had assured him that everything was in order and that he, Chong, would take the responsibility of collecting the purchase price of the properties sold. In fact even before he signed the first sale and purchase agreement, the appellant had inquired about the payment of the 10% deposit and he was assured by Chong that he, Chong, would issue him with a comfort note to allay his fears. That comfort note was only prepared by Chong at the time of the execution of the second sale and purchase agreement.

[16] Before us, the decision of the Court of Appeal was attacked on the grounds that it had erred in its appreciation of both the facts and the law.

[17] The first issue that was raised relates to the finding that the appellant knew of the misrepresentations appearing in the two deeds of assignment. It was argued that reliance by the Court of Appeal on the same finding made by the High Court was misplaced as the High Court had confused the facts surrounding the executions of the two sale and purchase agreements with that surrounding the executions of the deeds of assignment.

[18] The only payments acknowledged by the two sale and purchase agreements as having been received by the respondent from Sa-Mula were the 10% deposits of the purchase prices of the two basement units, the subject matter of the first sale and purchase agreement, and the ground floor unit the subject matter of the second sale and purchase agreement.

[19] The appellant's testimony on the deposits was that before he executed the two sale and purchase agreements, he had inquired from Chong whether the deposits had been paid. Chong had assured him that he, Chong, would collect all the monies due under the agreements and that he was also prepared to issue a comfort note to the appellant, which he did at the time the second sale and purchase agreement was signed. Chong was not called to testify and on the unchallenged evidence of the appellant, the Industrial Court made the following finding of fact.

> It is clear beyond all reasonable doubts upon a consideration of the evidence that the two SPA's were signed with Simon Chong's confident assurance that all monies will be collected by him and further his instruction was not merely oral but supported in the form of a Note, to induce the Claimant to sign the SPA's without any anxiety whatsoever. It is unequivocally clear that the Claimant signed the two SPA's not only because he was authorized and instructed to do so but under the conviction that the transaction was above board.

[20] In summary, the Industrial Court made a finding that at the time when he executed the two sale and purchase agreements, the appellant was aware that the respondent had not received the 10% deposits from Sa-Mula, but all the same, he signed the agreements on the assurance given by Chong that the 10% deposits would be collected.

[21] However a different situation arose when the appellant was instructed by Chong to sign the two deeds of assignment. On each occasion the appellant inquired whether all monies had been paid and he was assured by Chong that everything was in order and it was proper for him to sign the two deeds. From this evidence the Industrial Court arrived at the following conclusion.

> It is crystal clear and transparent that the Claimant endorsed the two DOA's only because of the directives from Simon Chong to endorse the said documents, only because Simon Chong accepted full responsibility and accountability for the monies that were due

> to the company only and only because Simon Chong had given the Claimant a confirmation and full assurance that everything would be in order to sign the two SPA's and the DOA's.

[22] Under these circumstances the Industrial Court concluded that the appellant was innocent of any wrongdoing but had acted on the representations made by his superior. To that extent it cannot be said that the appellant knew that the deeds contain misrepresentations.

[23] In this case it must be established that the guilty knowledge must be present not at the time when the sale and purchase agreements were executed but at the time when the deeds were endorsed as the charges against the appellant relate to the two deeds.

[24] When reviewing the evidence of the appellant's state of mind at the relevant times, the High Court appeared to have misread the facts and confused the events by concluding that when he executed the two deeds of assignment, the appellant "knew that he was doing wrong." This is seen from the judgment which is expressed in the following manner.

> In this case, there was no shred of evidence that in giving the orders, force or coercion had been applied against the will of the first Respondent to commit the wrongful act of making false endorsements on the two deeds of assignment.

The judgment goes further to express the following.

> In fact from the evidence the first Respondent knew that what he was doing was wrong, but the risk he took was from his mistaken belief upon the assurance given by Simon that he would be responsible to ensure that all moneys would be collected. Before the endorsements, it was he who pointed it to Simon of the irregularity in the documents but upon the assurance given followed by a written note to that fact by Simon he committed the act.

The first respondent referred to in the judgment is the appellant.

[25] From the above passages, it would appear that the High Court linked the assurance given by Chong to be responsible for collecting all monies due, to have been made by him at the time of the endorsements of the two deeds. This is not correct. That assurance was given at the time the two sale and purchase agreements were signed. This mistaken belief is again reflected

when mention is made to the "irregularities in the documents" and coupled with the reference to "a written note", all of which indicate to events that were present at the time when the sale of purchase agreements were signed. It must be remembered no written or comfort note was issued at the time of the assignments. Since the facts alluded to by the High Court were not present at the time of the endorsements but nevertheless associated with the two deeds, the High Court reached a conclusion which resulted in the findings of the Industrial Court being set aside.

[26] The Court of Appeal accepted the conclusion of the High Court and in so doing made the same error as the High Court. This is borne out by the statement of the Court of Appeal that although the appellant "knew of the true position of the transactions at the material time, he went on to endorse the deeds on the assurance given by his superior Mr. Simon Chong." This statement cannot be right as the court was alluding to findings based on facts that happened prior to the endorsements of the deeds of assignment to arrive at the conclusion that the appellant had the guilty knowledge at the time the two deeds were endorsed. This conclusion we say is erroneous as the guilty mind that requires to be established must be the guilty mind present at the time of the endorsements of the deeds and not at the time of execution of the two sale and purchase agreements. As I have indicated above, at the time of the endorsements, the Industrial Court had concluded that the appellant was not aware that the purchase price of the properties had been paid in full, a finding of fact, which we are not about to disagree with as the evidence supports such a finding and we see nothing perverse about it to warrant reversing it. Moreover the appellant's conduct in confronting Chong after he discovered that the deeds contained misrepresentations is consistent with the conduct of a man who did not know that he had committed a wrong.

[27] The other issue taken before us was whether the Court of Appeal was correct when it held that the general rule on superior orders does not apply to an employee who is conscious that an order given to him is manifestly wrong.

[28] In Malaysia, the general rule governing the doctrine of superior orders is nothing more than the duty of obedience that is expected of an employee. The most fundamental implied duty of an employee is to obey his employer's orders. The classic

modern statement of that duty is found in the judgment of Lord Eversherd M.R. in *Laws v. London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285 to be as follows.

> It is, no doubt, therefore, generally true that wilful disobedience of an order will justify summary dismissal, since wilful disobedience of a lawful and reasonable order shows a disregard – a complete disregard – of a condition essential to the contract of service namely the condition that the servant must obey the proper orders of the master and that, unless he does so, the relationship is, so to speak, struck at fundamentally.

[29] Working as instructed is the employee's basic consideration under a contract of employment just as providing remuneration is the basic consideration of his employer. However the employee's duty to comply is confined to all the lawful and reasonable orders of his employer in respect of the performance of such functions that falls within the scope of his contract of employment. Whether the employer's orders are lawful and reasonable would depend very much on the terms and conditions of the contract and the character of employment. The term "lawful and reasonable order" is often used to describe the order given and in this context it means primarily an order which is reasonably within the ambit of the employment in question so that, in any given dispute much or all will depend on the terms of the individual contract of employment. The employer thus cannot give an order outside the proper scope of the employment.

[30] One of the earliest cases dealing with the question of lawful and reasonable orders can be found in *Menon v. The Brooklands (Selangor) Rubber Co Ltd* [1967] 1 LNS 100 where Raja Azlan J (as he then was) had to deal with the issue of the plaintiff's refusal to acknowledge receipt of a warning letter on a copy. The refusal was reported to the manager, who then directed the assistant manager to write to the plaintiff a letter instructing him to see the manager personally. This was done but the plaintiff refused to comply with such direction. The plaintiff was found guilty of misconduct in his employment in that he disobeyed the lawful and reasonable order of the defendants. The footnote on the case had the following holding.

A Held: the refusal to acknowledge receipt of warning letter justified instant dismissal since it goes to the essential conditions of his contract of service which requires that he be a diligent and responsible estate conductor. The conduct was inconsistent with his duty towards the master. It was inconsistent with the continued confidence between them essential to the relationship of
B master and servant.

[31] Further on appeal to the Federal Court [1968] 1 LNS 77. Pike CJ, in dismissing the appeal had this to say:

C This, in addition to the contumacious manner in which he refused to obey the instruction to see the manager of the estate, went far beyond a mere isolated act of disobedience of a lawful order. It challenged and rejected the whole fabric of the relationship of employer and effectively destroyed the trust which must subsist in any such relationship where the employee holds a responsible
D position.

[32] That same principle of law was followed in (1) *Oasis Milk Bar v. Lim Teng & Ors* [1962] 1 LNS 111, (2) *Vasudevan Pillai & Anor v. City Council of Singapore* [1965] 2 MLJ 51, (3) *Yong Yoke Sung & Ors v. Sungai Way Estate* [1966] 1 MLJ 175 and (4) C *Paranthaman v. Sime Darby Berhad (Sime Darby Plantation)* [1994] 4 CLJ 532.
E

[33] From the case law, it is clear that the duty of obedience is confined to compliance with the lawful and reasonable orders of
F an employer and as such the concept of an order being manifestly wrong has no part in the doctrine of superior orders. To that extent the Court of Appeal erred when it made an exception to the general rule on superior orders when stating that an employee is entitled to disobey the orders of his superior if he, the
G employee, is aware that such orders are manifestly wrong. However that exception holds good in military or criminal law as seen from the case of *PP v. Tengku Mahmood Iskandar* [1973] 1 MLJ 128 where it was held that "a soldier is not protected where the order is grossly illegal."
H

[34] The duty of an employee at common law is also similar in that he is to comply with all lawful and reasonable orders given by his employer with respect to the performance of such functions within the scope of his employment. That duty is one of the
I fundamental obligations which is deemed to be impliedly undertaken in every contract of hiring. The duty of obedience at

common law is subject to two qualifications, firstly that the employer may not order his employee to do something illegal or secondly order his employee to do anything dangerous.

[35] However it may well be that an employee is caught in the situation that he is required to obey an order and he is doubtful whether the order is legal or not. Under those circumstances the proper course is for the employee to obey the order first and to challenge its legality in separate proceedings. This distinction is made on the basis that if the law allows the employee to disobey any order he thinks is not legal, it would be impossible for the management to maintain discipline and industrial peace. On the other hand, if the employee takes it upon himself to disobey the order which he thinks to be unlawful and unreasonable two courses are open to him. He can point out his difficulties, if any, to the superior and if the latter insists on the order being carried out, he can do the work and take the matter further in proceedings against his employer or to complain to his union. If he disobeys, he must take the risk if the court finds the order to be lawful and reasonable. See the case of *Pan Global Textiles Berhad, Pulau Pinang v. Ang Beng Teik* [2002] 2 MLJ 27.

[36] For the reasons that we give in this judgment we answer both questions posed to us in the negative.

[37] As we accept the findings of fact made by the Industrial Court and we see nothing perverse in their application of the relevant employment laws, we allow this appeal with costs here as well as costs in the High Court and Court of Appeal, set aside the orders of the Court of Appeal dated 20 November 2003 and restore Award No. 179 of 1993 dated 16 June 1993. The deposit made in this appeal is to be refunded to the appellant.

[38] My learned brothers, Abdul Malek Ahmad, PCA, and Alauddin Mohd Sheriff, FCJ, who have had sight of this judgment in draft concur with the reasons given and the conclusions reached.